

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
JOSE JUAREZ,

Plaintiff,

-against-

CALVIN D. MITCHELL,
METROPOLITAN FOODS, INC.
and DRISCOLL FOODS,

Defendants
-----X

Docket No.: _____ / 19

NOTICE OF REMOVAL

Jury trial demanded

PLEASE TAKE NOTICE that, PURSUANT TO U.S.C. §§ *et seq.*, CALVIN D. MITCHELL, named herein as Petitioner and Defendant, through his attorneys Litchfield Cavo LLP, hereby remove the New York State Supreme Court action described below to the United States District Court for the Southern District of New York on the following grounds:

1. The plaintiff named in the caption above has commenced an action in the Supreme Court of the State of New York, County of Bronx, entitled *Juarez v. Mitchell, et al.*, Index No. 24122/2018, wherein plaintiff, as set forth in the above caption, is the plaintiff; and wherein the petitioner herein, Calvin D. Mitchell, is a named defendant, along with Defendants Metropolitan Foods, Inc. and Driscoll Foods. A copy of the Summons and Complaint is annexed hereto as **Exhibit A**. Copies of the defendants' Answers are annexed hereto collectively as **Exhibit B**.

2. The Supreme Court action is a civil action between citizens of different states, and the matter in controversy exceeds \$75,000 exclusive of interest and costs, and is one over which the United States District Court has original jurisdiction under the provisions of 28 U.S.C. §1332, and which may be removed by petitioner pursuant to 28 U.S.C. §1441.

3. Plaintiff Juarez is an individual. When the Summons and Complaint were filed, plaintiff

Juarez alleged that he was domiciled in the State of New York, County of Bronx.

4. Petitioner/Defendant Calvin D. Mitchell ("Mitchell") is an individual. When the Summons and Complaint were filed, Defendant Mitchell was, and still is, a resident of the State of New Jersey. He was not a resident of any other State other than New Jersey. When the Summons and Complaint were filed, Defendant Mitchell was, and still is, domiciled in the State of New Jersey.

5. Defendant Metropolitan Foods, Inc. ("Metropolitan") a corporation. When the Summons and Complaint were filed, Defendant Metropolitan was, and still is, incorporated in the State of New Jersey. Further, when the Summons and Complaint were filed, Defendant Metropolitan maintained its principal place of business in the State of New Jersey.

6. Defendant Driscoll Foods is not a legal entity. Rather, it is the "doing business as" name for Defendant Metropolitan.

7. In light of the above, every fact and law herein is wholly between citizens of different states.

8. Plaintiff's complaint seeks money damages from the defendants based upon causes of action founded in negligence as a result of a motor vehicle accident, and the claims are for personal injury. The Complaint, however, was devoid of any numerical value as to the damages being claimed.

9. Based upon a Bill of Particulars recently served on April 28, 2019 in the Supreme Court action, plaintiff is alleging \$100,000 in special damages. A copy of Plaintiff's Bill of Particulars is annexed hereto as **Exhibit C**. This alleged amount for special damages alone (i.e. not inclusive of future claims for pain and suffering) exceeds the \$75,000 controversy required for Federal Jurisdiction.

10. Petitioner hereby petitions to remove the above-captioned action to this Court under the provisions of 28 U.S.C. §1441.

11. Thirty (30) days from the date of the service on petitioner/defendant of the Bill of Particulars alleging a monetary amount has not yet elapsed.

Dated: May 24, 2019
New York, New York

Yours, etc.

LITCHFIELD CAVO LLP



By: Dana M. Ricci (DR 2613)
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File No: 4212-223
Attorney for Defendant
Calvin D. Mitchell

TO:

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File No: 1013-83 599
Attorney for Defendants
Metropolitan Foods Inc. and Driscoll Foods

STATE OF NEW YORK)

ss.:

COUNTY OF NEW YORK)

DANA M. RICCI, being duly sworn, deposes and says:

I am the attorney for the defendant, CALVIN D. MITCHELL.

I have read the foregoing Notice of Removal and believe the contents thereof to be true except for those matters therein alleged to be upon information and belief, and as to such matters, I believe them to be true.

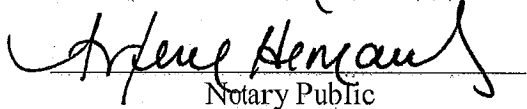
The source of my information is the plaintiff's Summons and Complaint, plaintiff's Bill of Particulars, and discussions with defendant CALVIN D. MITCHELL and counsel for defendants METROPOLITAN FOODS, INC. and DRISCOLL FOODS

Dated: May 24, 2019
New York, New York


DANA M. RICCI (DR-2613)

Sworn to before me this

24th day of May 2019


Notary Public

ARLENE HERNANDEZ
Notary Public, State of New York
No. 01HE5066127
Qualified in Bronx County
Commission Expires Sept. 23, 2022